

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Gerald E. Lewis,

Civ. File No. 05-1645 (PAM/FLN)

Petitioner,

v.

ORDER

J.F. Caraway, Acting Warden,

Respondent.

This matter is before the Court on Petitioner's objections to United States Magistrate Judge Franklin L. Noel's Report and Recommendation ("R&R") dated August 11, 2005. Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.1(c). Based on that review and the Petitioner's arguments, the Court adopts the Report and Recommendation.

Petitioner objects to the Magistrate Judge's conclusion that his Petition, which is captioned as a 28 U.S.C. § 2241 petition, should be construed as a motion under § 2255. The Magistrate Judge determined that, because Petitioner had previously filed a § 2255 motion, he was required to seek permission from the Eighth Circuit Court of Appeals prior to filing the instant Petition. Petitioner did not seek such permission, and therefore pursuant to § 2244, the Court lacks jurisdiction to consider Petitioner's claims.

Petitioner further contends that § 2255 is "inadequate or ineffective" and that he must pursue his claims under § 2241. The crux of Petitioner's claims is that he is actually innocent.

However, the Magistrate Judge correctly noted that the Supreme Court's decisions in Apprendi v. New Jersey, 530 U.S. 466 (2000), Blakely v. Washington, 124 S. Ct. 2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005), do not "decriminalize the circumstances that produced Petitioner's sentence . . . [and] do not make Petitioner actually innocent of anything." (R&R at 9.) The Court finds that the remainder of Petitioner's objections are without merit and finds that the conclusions of the Magistrate Judge are correct. Accordingly, the "inadequate or ineffective" exception to § 2255 is inapplicable. Therefore, the Court overrules Petitioner's objections, and finds that Petitioner's § 2241 petition must be summarily dismissed for lack of jurisdiction.

Pursuant to statute, the Court has conducted a de novo review of the record. 28 U.S.C. § 636(b)(1); Local Rule 72.1(c)(2). Based on that review, the Court **ADOPTS** the Report and Recommendation (Clerk Doc. No. 2).

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's objections (Clerk Doc. No. 4) are **DENIED**;
2. The Petition for a Writ of Habeas Corpus (Clerk Doc. No. 1) is **DENIED**; and
3. This action is summarily **DISMISSED** for lack of jurisdiction.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 25, 2005

s/Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge